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The functioning of democratic institutions in Armenia

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Co-rapporteurs: Mr John PRESCOTT, United Kingdom, Socialist Group, and Mr Axel E. FISCHER, Germany, Group of the European People's Party

Summary

The Monitoring Committee considers that the outcome of the latest general amnesty, the renewed impetus to investigate the ten deaths during the March 2008 events and the consequent start of a constructive dialogue between the opposition and ruling coalition mean that the chapter on the March 2008 events can finally be considered closed. It welcomes the political will demonstrated by the authorities and indeed all the political forces to resolve this issue in line with Council of Europe standards and recommendations.

For the committee, the 2008 events and their aftermath have set clear priorities for the democratic development of the country: the conduct of genuinely democratic parliamentary elections; the creation of a robust democratic and pluralist political environment that has the full trust of the Armenian public; the establishment of an open and pluralist media environment; the reform of the police and the reform of the judiciary with a view to guaranteeing its independence both in law and practice.

The committee intends to follow closely the priorities mentioned in the resolution while at the same time ensuring that they do not diminish the importance of the other obligations and commitments of Armenia to the Council of Europe.

1. Reference to committee: Resolution 1115 (1997).

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A. Draft resolution [2]

1. The Parliamentary Assembly welcomes the general amnesty adopted by the National Assembly of Armenia on 26 May 2011, which was proposed by the President of Armenia. It notes with satisfaction that all those who remained in prison in relation to the events of 1 and 2 March 2008 have been released.

2. The Assembly takes note of the report of the Ad Hoc Parliamentary Inquiry Committee of the National Assembly and considers that, despite a number of shortcomings, its recommendations constitute a sound basis for addressing the underlying causes of the March 2008 events and for preventing similar situations from developing in the future.

3. The Assembly reiterates its concern about the lack of results of the inquiry into the ten deaths that occurred during the March 2008 events. It therefore welcomes the renewed impetus given by the President of Armenia in recent months. In relation to this inquiry, the Assembly considers that:

3.1. it should also focus on the issue of command responsibility and the context in which the ten deaths occurred, in order to avoid similar situations from happening in the future;

3.2. in the event that individual responsibility for the ten deaths cannot be established, the reasons for this should be fully explained in the report of the investigation;

3.3. transparency is crucial for the credibility of this inquiry and the report containing the findings and conclusions of this inquiry should therefore be made available for public scrutiny, even if it fails to establish individual responsibility for the ten deaths;

3.4. timely publication is important to provide closure to this painful episode in Armenia's recent history and the authorities should therefore publish the report before the end of 2011 or, alternatively, consider publishing an interim report.

4. The Assembly welcomes the constructive response to the amnesty from the opposition, and in particular by the Armenian National Congress, and the renewed investigation into the ten deaths during the March 2008 events. It congratulates the ruling coalition and the extra-parliamentary Armenian National Congress on their agreement to initiate a formalised open-ended dialogue on the normalisation of the political environment in Armenia. In addition, the Assembly expresses its hope that this dialogue will be supplemented with a similar dialogue between the ruling coalition and the parliamentary opposition in the framework of the work of the National Assembly itself.

5. Underscoring the importance of the dialogue between the ruling majority and the opposition, which it has consistently called for, the Assembly urges all parties to participate in this dialogue constructively and in good faith and not to restrict its discussions to a limited number of potentially contentious subjects. In the view of the Assembly, this dialogue should aim at ensuring the further normalisation of the political climate, ensuring the proper conduct of the upcoming parliamentary elections, as well as creating a political climate in which genuinely democratic elections can take place which have the full confidence of the Armenian people.

6. The forthcoming parliamentary elections are crucial for the democratic development of the country. Democratic elections which result in a parliament that reflects all the relevant political forces in the Armenian society will consolidate the normalisation of the political environment and ensure the trust of the Armenian public in the political institutions of their country. In this respect, the Assembly:

6.1. welcomes the adoption of a new electoral code, on 26 May 2011, which was drafted in close consultation with the European Commission for Democracy through Law (Venice Commission), well before the elections are due;

6.2. considers that the new electoral code forms an adequate basis for the conduct of democratic elections, if implemented in good faith, but urges the authorities to address all recommendations and shortcomings that may be contained in the forthcoming opinion of the Venice Commission on the code as adopted;

6.3. stresses that the full implementation, both in letter and in spirit, of the new electoral code is a pre-condition for the conduct of democratic elections;

2. Draft resolution adopted by the committee on 8 September 2011.

6.4. underscores that genuinely democratic elections necessitate the full trust of the public and all stakeholders in the election process and administration. The Assembly therefore calls on all political forces to actively contribute to a democratic election process and to refrain from any action or statements that could undermine public trust in the election process and its outcome;

6.5. considers that, in addition to domestic observers, international election observers have an important role to play in fostering public trust in the election process and therefore calls on the international community to ensure a large-scale election observation exercise and invites the Bureau of the Assembly to contribute to that process with a large delegation from the Assembly.

7. The Assembly is concerned about the functioning and lack of independence of the judiciary in Armenia, which impedes its role as an impartial arbiter. It is equally concerned about persistent reports and allegations of endemic corruption in the Armenian judiciary. In this respect, it welcomes the importance and priority given by the authorities to the reform of the judiciary, especially with a view to ensuring its independence. It considers that the reform of the judiciary cannot be achieved through legislative changes alone and should be accompanied by a comprehensive policy for their implementation aimed at changing existing mentalities and practice.

8. The Assembly notes the persistent allegations of corruption in Armenia which negatively impacts on the democratic development of the country. It therefore urges the Armenian authorities to strengthen their ongoing efforts to combat corruption and to implement, without delay, the recommendations made in the latest evaluation report adopted by the Group of States against Corruption (GRECO).

9. In the opinion of the Assembly, the March 2008 events have clearly underscored the need for a thorough reform of the police forces in Armenia. In this respect, the Assembly:

9.1. welcomes the efforts by, and political will of, the Armenian authorities to fully reform the police and police forces in line with European standards. In the light of the March 2008 events, the Assembly recommends that these reforms include a thorough review of crowd management policies and capacities of the police;

9.2. reiterates its call that the police should be brought under genuinely civilian control and accountability and invites the Armenian authorities to consider the establishment of a ministry to which the police and security forces would be subordinate;

9.3. expresses concern about the reports of police brutality and misconduct and urges the authorities to step up their efforts to root out ill treatment and abuse by the police;

9.4. considers the establishment of an independent police complaints mechanism essential. It welcomes the willingness of the authorities to establish such a mechanism and calls for them to ensure that the necessary preconditions for it are met without delay.

10. The Assembly considers a genuinely pluralist media environment an essential condition for the democratic development of Armenia. The Assembly welcomes the amended Television and Broadcasting Act, which is an improvement on previous legislation, but reiterates its call to the Armenian authorities to ensure a pluralist media environment also in practice. In this respect, the Assembly:

10.1. takes note of the outcome of the tender for broadcasting licences which was held in Armenia in 2010 and of the subsequent decision of the Committee of Ministers to close the examination of the execution of the judgment of the European Court of Human Rights in the case of *Meltex and Mesrop Movsesyan v. Armenia* on the ground that a transparent tender had taken place;

10.2. considers that the outcome of the licensing tender has not resulted in a more pluralist media environment and therefore that the outcome of this tender is not in line with the requests of the Assembly in this regard;

10.3. reiterates its call on the Armenian authorities that amendments should be made to the Television and Broadcasting Act in order to ensure that the composition of the National Commission on Television and Radio (NCTR), as well as the Public Television and Radio Council, truly reflect and are representative of Armenian society;

10.4. calls on the authorities to introduce the legal obligation that licensing decisions of the NCRT should be guided by and reflect the need to increase the pluralism and diversity of the media environment in Armenia;

10.5. considers that a substantially lower barrier for interested groups to enter the media market is an important mechanism to increase the plurality of the media environment. Given the potential of digital broadcasting to increase the number of broadcasting licences available, the Assembly considers that the authorities should hold, when feasible, a new broadcasting licence tender with the explicit aim of increasing the pluralism and diversity of the media environment in Armenia.

11. The Assembly considers that the outcome of the latest general amnesty, the renewed impetus to investigate the ten deaths during the March 2008 events and the resulting start of a constructive dialogue between the opposition and ruling coalition mean that the chapter on the March 2008 events can finally be considered closed. It welcomes the political will demonstrated by the authorities and indeed all the political forces to resolve this issue in line with Council of Europe standards and recommendations.

12. For the Assembly, the 2008 events and their aftermath have set clear priorities for the democratic development of the country: the conduct of genuinely democratic parliamentary elections; the creation of a robust democratic and pluralist political environment that has the full trust of the Armenian public; the establishment of an open and pluralist media environment; the reform of the police and the reform of the judiciary with a view to guaranteeing its independence both in law and in practice.

13. The Assembly welcomes the close and constructive co-operation between the Assembly and the Armenian authorities, which it considers to be an example for the development of co-operation in the framework of its monitoring procedure.

14. The Assembly resolves to closely follow the priorities mentioned in this resolution, while at the same time ensuring that they do not diminish the importance of the other obligations and commitments of Armenia to the Council of Europe.

B. Explanatory memorandum by Mr Prescott and Mr Fischer, co-rapporteurs

1. Introduction

1. The Parliamentary Assembly adopted its previous Resolution 1677 (2009) on the functioning of democratic institutions in Armenia on 24 June 2009. In that resolution, the Assembly considered that the release of many, if not all, persons arrested in relation to the March 2008 events by way of a general amnesty, as well as the assurances given by the authorities that a credible investigation into the events of March 2008 would be conducted, were a clear indication of the willingness of the authorities to overcome the political crisis and to turn to a new page in Armenia's democratic development.

2. In Resolution 1677 (2009), the Assembly also invited the rapporteurs to pay specific attention to the remaining persons in detention, to the issue of the need for a transparent and credible investigation into the March 2008 events and its causes, to the ongoing investigation into the circumstances and responsibility for the ten casualties that occurred during these events, as well as to the respect, in practice, of the right to freedom of assembly. In addition, the Assembly urged the authorities to implement, without delay, profound reforms of the police, *inter alia* with a view to establishing a proper public oversight mechanism, and of the judiciary, with a view to ensuring its independence.

3. Since the adoption of Resolution 1677 (2009) the political developments in the country have been followed closely by the rapporteurs and have been the topic of a number of information notes submitted to the Monitoring Committee. In addition, the reform package initiated by the authorities was the subject of a special hearing in the Monitoring Committee, on 5 October 2010, to which a range of opposition parties (parliamentary and extra-parliamentary) were invited to participate. Moreover, the co-rapporteurs visited the country from 15 to 18 March and from 19 to 21 July 2011. During the whole reporting period, the co-rapporteurs enjoyed extensive and constructive co-operation from the authorities as well as from representatives of all political forces, both parliamentary and non-parliamentary, for which they wish to express their sincere appreciation and gratitude.

4. When the Assembly adopted Resolution 1677 (2009), we expected a swift normalisation of the political environment in Armenia, which would have allowed us to return to monitoring the full range of commitments and obligations of Armenia. Regrettably, the issues of the remaining prisoners and the investigation into the ten deaths of March 2008 have dominated the political environment and agenda for most of the reporting period and continued to poison the political climate. However, to our great satisfaction, a number of important developments took place in spring 2011, which addressed the remainder of the outstanding issues with regard to the March 2008 events.

5. On 20 April 2011, President Sargsyan ordered the law enforcement agencies to give a renewed impetus to the stalled investigations into the March 2008 events and especially into the responsibility for the ten casualties. In addition, requests by the opposition party Armenian National Congress (ANC) [3] to hold rallies on Liberty Square – the venue of the 2008 protests, which had been off-limits for opposition demonstrations since then – were granted by the authorities. This was followed, on 26 May 2011, by the adoption by the National Assembly, on the initiative of President Sargsyan, of a new general amnesty. As a result of this amnesty, the second one in three years, all remaining persons in prison as a result of the March 2008 events were released. This amnesty was followed by public declarations from the main opposition forces that their conditions had been met and that they were now ready to engage in a dialogue with the authorities on the democratic development of the country. This in turn effectively normalised the political environment – although it remains antagonistic – and finally closed this painful chapter in Armenia's history. These important developments come at a critical moment for the country as it is gearing up towards the parliamentary elections in spring 2012. These elections will be crucial in order to rebuild the trust of the Armenian people in the political system and will be an opportunity to create the genuinely pluralist and inclusive political climate necessary to address the important challenges that Armenia is facing.

6. In this report, we intend to take stock of the main developments with regard to the outstanding issues of the March 2008 events, as well as of the important reforms that were initiated by the authorities to address their underlying causes. On that basis, we will outline some of our recommendations for these reforms and define a number of priorities for the ongoing monitoring procedure of Armenia, with a view to possibly presenting a full monitoring report to the Assembly in 2013.

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3. The Armenian National Congress is also known by its Armenian abbreviation HAK. For consistency, we will use the English abbreviation ANC in this report.

2. Persons remaining in prison after the first general amnesty in 2009

7. Resolution 1677 (2009) noted that, under the general amnesty declared on 19 June 2009, most, but not all, persons deprived of their liberty in relation to the events of 1 and 2 March 2008 had been released, and it asked the Monitoring Committee to follow closely the developments with regard to the remaining cases. [4] In addition, the resolution noted that this amnesty was applicable to persons in hiding if they gave themselves up voluntarily to the police before 31 July 2009. Given the possible application of the amnesty for these persons, the Assembly urged the Armenian authorities to allow those persons concerned to remain free during their trials.

8. Following the adoption of the 2009 amnesty, two persons who had been on the run, Mr Nikol Pashinyan and Mr Khachatur Sukiasyan, [5] turned themselves in. Both men were initially detained pending their trial. Mr Sukiasyan was subsequently released pending trial under a promise not to leave the country, but Mr Pashinyan remained in detention on remand for the whole duration of the trial proceedings, despite calls from the Assembly to the contrary.

9. On 8 February 2011, the Special Investigation Service of Armenia formally dropped the criminal charges against Mr Sukiasyan in relation to the March 2008 events for lack of evidence. Mr Sukiasyan, who protested his innocence against the charges levied against him, had requested that not only should the charges be dropped but also that he be formally acquitted, in order to clear his name.

10. On 19 January 2010, Mr Pashinyan, who was considered by the authorities as one of instigators of the March 2008 events, was sentenced to seven years in prison. His sentencing was controversial, as the courts sentenced him to seven years while the prosecution had asked for “only” six years. Customarily, judges in Armenia pass lower sentences that those asked for by the prosecution. Therefore, in the view of many interlocutors, the main reason for this extraordinary sentencing was the clear intention of the authorities not to release Mr Pashinyan under the terms of the 2009 general amnesty. The sentencing was also problematic for the Assembly on the grounds that Mr Pashinyan was sentenced exclusively under article 225 (mass disorder) of the Criminal Code. [6] In previous resolutions on this issue, the Assembly had expressed its view that convictions under Article 225 in relation to the events of 1 and 2 March 2008 were unacceptable. Moreover, the conviction of Mr Pashinyan was based primarily on police testimony without corroborating evidence, [7] a practice deemed problematic by the Assembly as well according to the case law of the European Court of Human Rights.

11. Following the 2009 amnesty, a number of additional persons remaining in prison in relation to the March 2008 events were released when their request for a presidential pardon was granted. However, according to Armenian legislation, a pardon can only be granted when guilt is admitted by the person in question, which, for understandable reasons, was not an option for a number of detainees.

12. Under the terms of the 2009 amnesty, persons who were not eligible for release from prison had their remaining sentence halved. As a result, most remaining prisoners were eligible for parole under Armenian legislation, which stipulated that in most cases parole can be considered when half of the sentence has been served. This opened up new possibilities for the release of persons deprived of their liberty in relation to the March 2008 events, in line with our Assembly’s suggestions. During his visit to Armenia in the framework of the Forum for the Future of Democracy, in October 2010, Mr John Prescott urged the authorities to release the remaining prisoners on parole as soon as they were eligible and not to place any artificial barriers in the way of their release.

13. In the last trimester of 2010, a significant number of persons imprisoned in relation to the March 2008 events were released on parole. As a result, at the time of our visit in March 2011, only seven persons remained in prison whose conviction was considered politically motivated by the Armenian National Congress. The most prominent among these were Mr Nikol Pashinyan, whose case we have discussed above, and Mr Sasun Mikaelyan, one of the other MPs whose immunity was lifted. Mr Mikaelyan was not eligible for release under the 2009 amnesty because he was also convicted for illegal arms possession after a large arms cache

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4. Resolution 1677 (2009), paragraphs 5.2 and 16.
5. Mr Nikol Pashinyan is a newspaper editor and one of the protest leaders in 2008, and Mr Khachatur Sukiasyan is one of the three MPs whose parliamentary immunity was controversially lifted for his alleged role in the March 2008 events.
6. Mr Pashinyan was also charged under Article 316 (violence against a representative of the authorities). However, the court acquitted Mr Pashinyan of the charges brought under Article 316 and convicted him solely on charges brought under Article 225.
7. The authorities provided a controversial linguistic and psychological analysis of a speech by Mr Pashinyan on 1 March 2008 as evidence of his role as “organiser” of the March 2008 events.

was found in his possession. Mr Mikayelyan's health situation had reportedly been deteriorating rapidly in prison, prompting the Council of Europe Commissioner for Human Rights to call for his release on humanitarian grounds during his visit in January 2011.

14. During our March 2011 visit, we stressed that the continued imprisonment of opposition supporters in relation to the March 2008 events, together with the lack of a proper investigation into the ten casualties that occurred during those events, continued to poison the political atmosphere in the country and had become the main obstacle to the normalisation of the political environment. This, in turn, risked having a negative impact on the upcoming parliamentary elections in May 2012. We therefore strongly urged the authorities to use all legal means available to them to release the remaining opposition supporters and not to place any obstacles in the way of their early release when that opportunity arose.

15. On 20 May 2011, President Sargsyan requested the National Assembly of Armenia to adopt a general amnesty, which it did on 26 May 2011. Under the terms of the amnesty more than 500 people were released – including all of the persons remaining in prison in relation to the 2008 events – and more than 2 000 persons have had their remaining sentences reduced. The release of these persons removed the last obstacle for the normalisation of the political climate and opens the door for the beginning of a constructive dialogue between the authorities and the opposition. [8] This should be strongly welcomed by the Assembly.

3. Investigation into the 2008 events and the ten casualties

16. In Resolution 1677 (2009), the Assembly underscored that an impartial and credible investigation into the events of 1 and 2 March 2008, and the circumstances that led to them, continued to be necessary, despite the breakdown of the independent fact-finding group that was set up on the proposal of the Commissioner for Human Rights. Given that the Ad Hoc Parliamentary Inquiry Committee had continued its work in parallel to the fact-finding group and that it had reportedly been more independent in its work than originally expected, the Assembly considered that this body would be well placed to finalise the inquiry. In the view of the Assembly, a report of this committee would ultimately determine whether the criteria of impartiality and credibility had been met and whether further investigations would be necessary.

17. The Ad Hoc Parliamentary Inquiry Committee presented its report to the National Assembly on 17 September 2009. We analysed this report in our information note (document AS/Mon (2009) 38 rev).

18. In its report, the Ad Hoc Parliamentary Inquiry Committee concluded that the socio-economic polarisation, the lack of public trust in the authorities – especially in the judiciary – the lack of checks and balances between the different branches of government, the inadequate protection of civic and human rights, the lack of pluralism in the media and the emergence of a small political and economic elite governing the country had been the main underlying factors leading to the outbreak of discontent after the presidential elections in February 2008. However, surprisingly, the Inquiry Committee then went on to conclude that it had been the cynical exploitation of these factors by the forces supporting Levon Ter-Petrossian, as "propaganda against the authorities", that had created an atmosphere of intolerance and public discontent, which, in turn, was manipulated by the same opposition to instigate mass disorder.

19. This rather one-sided view of the underlying causes for the political crisis, the surprising lack of criticism of the authorities and the placing of the blame for the polarised political climate solely on the opposition forces, especially on those supporting Mr Levon Ter-Petrossian [9], is regrettable, as it undermines the credibility of the report by the Inquiry Committee. This is especially regrettable considering that the recommendations contained in the report make it clear that, in reality, the committee made a far more comprehensive and balanced analysis of the March 2008 events and the developments that led to them than would appear from its formal conclusions.

20. The report of the Inquiry Committee paints a picture of the actual events on 1 March as a badly planned and mismanaged police operation – ostensibly to act upon reports that protesters were amassing arms on Liberty Square [10] – that degenerated into practically uncontrollable riots. In this respect, the report recognises

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8. Former President Levon Ter-Petrossian declared after the amnesty that there were no more "political prisoners" in Armenia and expressed his willingness to engage in a dialogue with the authorities.

9. The report, for instance, fails to mention that several other presidential hopefuls, who afterwards joined the coalition forces, made repeated and strong allegations of electoral fraud after the 2008 presidential elections.

10. Regrettably, the report does not address the allegations that the police actions from the outset were aimed at quelling the protests and that the weapons were planted among the protesters. However, it is clear from the contents of the report that the Inquiry Committee had significant doubts with regard to the underlying reasons for the police action.

that the overall nature of these protests was spontaneous and not premeditated. This conclusion confirms the position of the Assembly, expressed in all its resolutions on the matter, that the March 2008 events cannot be considered as a premeditated attempt at a *coup d'état.*[11]

21. In its report, while considering the police action on the morning of 1 March 2008 "on the whole lawful and appropriate", [12] the Inquiry Committee strongly criticised the manner in which the police handled the situation during those events and, particularly, for not implementing measures to establish a dialogue with the protesters or deploying other non-violent mechanisms of crowd control. In addition, it considered that a significant number of individual police actions, including the confiscation and subsequent destruction of video materials of journalists and instances of police brutality, violated legal procedures and were overall unacceptable.

22. Similarly, the Inquiry Committee regretted and criticised the fact that opposition leaders did not do more to avert the civil disorder and outbreak of violence. In this respect, it notes that, due to contradictory decisions and the inaction of opposition leaders, measures were not taken that could have prevented the further deterioration of the situation in the afternoon of 1 March 2008.

23. A key issue for the Assembly has been, and is, the investigation into the ten deaths that occurred during the events of 1 and 2 March 2008. In Resolution 1677 (2009), the Assembly expressed its concern that the investigations by the Prosecutor General had not led to any results and considered it to be essential that this investigation be satisfactorily concluded without further delay. [13] During our contacts with the authorities and visits to the country, we have constantly highlighted this issue and called for a satisfactory answer to the circumstances of, and responsibility for, these ten deaths.

24. We welcomed the fact that, in its report, the Inquiry Committee paid extensive attention to the subject of the ten deaths. Also, the independent fact-finding group investigated this issue *in extenso*. Regrettably, its findings underscore the politicisation of the work of the group since it seems to focus on procedural mistakes and errors by the responsible investigation services rather than on establishing clarity with regard to the circumstances of these ten deaths. That said, these reports raise legitimate questions with regard to the official version of the events and contain important findings that deserve to be acknowledged as such. The responses of the investigation services to the reports of the independent fact-finding group illustrate an unacceptable level of contempt by these services for the members and the work of the fact-finding group. This raises questions about their willingness to get to the bottom of these issues.

25. Of the ten victims – two policemen and eight civilians – one person (a policeman) died as a result of the setting off of an explosive device, five from bullet injuries, three from injuries caused by being directly hit by "Cheremukha-7" gas grenades and one from injuries to the head caused by a non-specified blunt object.

26. With regard to the five persons who died from bullet wounds, in two cases the bullets could not be recovered, which makes it impossible to establish the type of weapon from which they were fired. Of the other three shooting deaths, two were the result of a bullet fired by a Makarov PM pistol and one from a bullet fired by a Kalashnikov 47 sub-machine gun. Given that it was established that the police were firing tracer bullets with Kalashnikov sub-machine guns over the heads of the protesters (!), as well as the fact that the Makarov PM is the standard-issue sidearm of the Armenian police, it could be expected that there would be a very high statistical chance of tracing some of these bullets to the weapons that fired them. However, to our surprise, the police have not been able to trace any of the bullets. This raises a number of serious questions about the police investigation and is very regrettable, for it could easily be construed as a possible cover-up by the police.

27. The death of three persons by tear gas grenades that were fired by the police has also been a matter of controversy. It was concluded by the investigation services that these three deaths were the result of grenades being fired directly at, or in the vicinity of, the protesters at point blank range, which is expressly forbidden in the regulations governing their use. Regrettably, international experts confirmed to the Inquiry Committee that it is impossible to match the grenade to the weapon that fired it because the bore does not leave a suitable ballistic signature on the plastic casing of the grenade. It seems therefore, in our view, doubtful that the policemen that fired these fatal grenades will ever be identified on the basis of the shrapnel found in the bodies.

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11. With that, it also vindicates the position of the Assembly that any convictions in relation to the March 2008 events on the basis of Article 300 (usurpation of power) of the Criminal Code of Armenia were unacceptable.
12. Conclusions of the Ad Hoc Parliamentary Inquiry Committee, p. 35, section 3.2, paragraph 22.
13. Resolution 1677 (2009), paragraph 9.

28. In our contacts with the Chair of the Inquiry Committee, we were informed about the lack of co-operation of the law enforcement and security services with the committee, which had created serious difficulties for the committee to receive the information it had requested, Similar complaints were also made to the Commissioner for Human Rights when he visited Armenia. [14]This lack of co-operation from the law enforcement agencies is totally unacceptable and, in our view, an additional argument for establishing civilian control over the police forces, as recommended by the Assembly in Resolution 1609 (2008) and Resolution 1677 (2009).

29. The one-sided and biased view of the responsibility for the events of 1 and 2 March 2008, the clear impression that the Inquiry Committee wanted, at all costs, to avoid overtly discrediting the official version of the events or harshly criticising the authorities on their handling of them, undermined the overall credibility of the inquiry and the impact it could have had on resolving the tense political environment. As a result, questions and doubts linger in the society as to the true causes and sequence of the events.

30. This is all the more regrettable as the recommendations contained in the report clearly indicate that the Inquiry Committee made a far more comprehensive and in-depth analysis of the events and their circumstances than is reflected in its official conclusions. In our view, implementation of the reforms and policies recommended in the report of the Inquiry Committee is a good basis for addressing the underlying causes of the events of March 2008, and we have therefore fully supported the subsequent reform process.

31. Until now, the Office of the Prosecutor General and Special Investigation Service of the police have not been able to identify any person or persons responsible for the ten casualties. The authorities therefore concluded that the opening of an inquiry was not possible as long as clear evidence that would identify the individuals directly responsible for the ten casualties was missing.

32. In our view, this was a restricted view of what such an inquiry should entail. We emphasised to the authorities that the aim of the inquiry called for by the Assembly was not only to identify, if possible, the individuals responsible for the ten casualties but also to establish how these casualties could occur during a public demonstration, to investigate possible command responsibility and to recommend that measures be taken to avoid a similar situation during future demonstrations. Furthermore, in the event that no individual responsibility can be established, such an inquiry should explain why this is the case. We also highlighted that other countries have held similar inquiries when police action resulted in fatalities, as for instance with the shooting of a Brazilian citizen by the police in the London Underground, or in the context of the troubles in Northern Ireland. Therefore, in our view, the fact that no individual responsibility can be established by the Prosecutor General is not a valid argument for failing to conduct a credible inquiry as called for by the Assembly.

33. We welcome the apparent openness of the authorities to our arguments in this respect. They informed us that a number of different – if partial – investigations into the causes of the ten deaths have been conducted by various government bodies in addition to – and following – the investigations conducted by the Prosecutor General and the Ad Hoc Parliamentary Inquiry Committee of the National Assembly. The authorities acknowledged that none of the findings of these investigations have been combined and assessed by an independent body, which would have increased its credibility in the eyes of the Armenian public.

34. President Sargsyan therefore indicated his willingness to reopen the investigation and to present a public report on its outcome. On 20 April 2011, the President subsequently ordered the law enforcement agencies to give renewed impetus to the stalled investigations into the March 2008 events and especially into the responsibility for the ten casualties that occurred. This renewed effort has substantially improved the political climate in Armenia and will hopefully provide closure for this painful episode in Armenia's recent history. In order to ensure the credibility of the investigations, we urge the authorities to make the full report of them available for public scrutiny, even if they fail to establish individual responsibility.

35. During our visit in July 2011, we met the Head of the Special Investigation Service, which has been tasked by the President of Armenia with re-evaluating all evidence and findings in the investigation into the ten deaths. While he was hopeful and confident that the investigation would lead to results, he confided that, until now, no new evidence has been unearthed that could help identify the persons responsible. In his view, the politicisation of the whole affair was influencing witness statements and their willingness to testify. We stressed the need to investigate command responsibility fully and to provide absolute transparency with regard to the progress, or lack thereof, of the investigation. In this respect, the weekly press conferences organised by the Special Investigation Service are a welcome step.

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14. Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Armenia from 18 to 21 January 2011, paragraph 67.

36. During our last visit to Armenia, President Sargsyan clearly demonstrated his personal commitment to establishing responsibility for the ten deaths that occurred.

37. The fact that, in the end, the police are responsible for investigating their own decisions and actions with regard to the ten deaths is a weak point in the investigation and leads to questions about their impartiality and credibility in the eyes of the Armenian public. In our view, this underscores the urgent need for the establishment of proper civil oversight and control over the police forces in Armenia, as called for by the Assembly in Resolution 1677 (2009). [15]

4. Reform package

38. As previously mentioned, the recommendations of the Ad Hoc Parliamentary Inquiry Committee form a sound basis for addressing the main underlying causes that ultimately led to the events of March 2008. The authorities have announced a comprehensive reform package to respond to the recommendations contained in this report. The main pillars of that reform package are electoral reform, reform of the judiciary and reform of the police. In addition, on various occasions, we have stressed the need for a reform of the media environment with a view to increasing its pluralism. The domestic monitoring of the implementation of these reforms has been entrusted by the authorities to the Standing Committee on State and Legal Affairs of the National Assembly, which is chaired by Mr Davit Harutyunyan, who is also the chair of the national delegation of Armenia to our Assembly. As a result, there has been a continuous exchange of information and interaction between the authorities, the co-rapporteurs and the Monitoring Committee. We would like to underscore that such a privileged and constructive dialogue should be seen as an example for co-operation in the framework of the monitoring procedure of the Assembly.

39. We will outline these reforms in more detail in the sections below. However, when assessing the overall reform package, we would like to stress two crucial issues.

40. First, while we welcome the significant number of reform concepts and strategies, these should now be translated into draft legislation and concrete policies, in order to implement the reforms needed for the country.

41. Second, most of the reform proposals focus on amending existing, or introducing new legislation. However, legislative changes alone cannot achieve the desired reforms. Many interlocutors, from all sides, acknowledge that existing legislation is often adequate but that it is not implemented coherently and/or in good faith. The reforms proposed should therefore not focus on legislative change per se but equally on changing existing practice and mentalities. We realise that such changes will not be easy to achieve and will meet resistance from vested interests. However, we are convinced that, with commensurate political will, it is possible to achieve these necessary changes of practice and mentalities.

4.1. Electoral reform

42. Electoral reform is a key element of the reform package of the authorities. The reforms in this area are especially important in the light of the parliamentary elections scheduled for May 2012. Free and fair elections that result in a parliament that reflects the different views and forces existing in Armenian society are essential for the normalisation of the political situation and democratic consolidation in the country. Equally important, especially in the light of the allegations made in relation to the 2008 presidential election, is that these reforms are implemented, and the election process itself is conducted, in a manner that will have the full trust of all the electoral stakeholders and the Armenian public.

43. Regrettably, questioning the fairness of the election process, and alleging – or at least insinuating – electoral fraud, has been part of the election strategies of several parties in the past. This has not contributed to public trust in the election processes and has been harmful. We therefore call on all parties not to undermine public trust in the election process by unnecessarily challenging the election process or claiming electoral fraud before the elections have even taken place. For similar reasons, we hope that all parties will resist the temptation to explain disappointing election results to their sympathisers by unjustifiably casting doubt on the fairness of the election process itself.

15. Resolution 1677 (2009), paragraph 14; this recommendation was already made in Resolution 1609 (2008) and Resolution 1620 (2008).

44. In the aftermath of the March 2008 events, the National Assembly established a special working group on electoral reform, [16] in which representatives of the civil society and extra-parliamentary opposition, as well as academic experts, were invited to participate. A number of opposition parties, including the Heritage Party [17] and the Armenian National Congress of Mr Levon Ter-Petrossian, were also invited. This working group was tasked with elaborating the proposals for electoral reform. While initially very active, it has been largely dormant since the beginning of 2009. As a result, the first proposals for the new electoral code were drafted in the Standing Committee on State and Legal Affairs and then tabled for discussion in the electoral working group. This procedure led to a number of opposition parties claiming that the authorities were trying to impose their views of the electoral system, but this seems to be belied by the elaborate and largely transparent consultation process that was put in place by the authorities.

45. The initial draft was presented by the authorities at a special conference to which *, inter alia* all political forces, as well as the European Commission for Democracy through Law (Venice Commission) and the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) were invited. Regrettably, the ANC declined to participate in this conference, which otherwise included all major political forces in the country. The authorities subsequently prepared a draft text for a new electoral code and sent it for discussion to the electoral working group that was established after the 2008 events. However, the discussions in the working group were boycotted by the opposition, including those who had participated in the conference, who felt that the draft prepared by the authorities did not reflect any of their views and suggestions as expressed during the international conference. As a result, the opposition feared that it would be unlikely that its views would be incorporated in the new electoral code and that its participation therefore would only serve to give legitimacy to a text that, in practice, it would have no concrete possibility to influence. In response, instead of participating in the working group, the opposition prepared its own alternative draft for a new electoral code.

46. At our request, the Monitoring Committee asked for an opinion of the Venice Commission on the alternative electoral code prepared by the opposition, in order to ensure that both versions would benefit from its expertise and assessment. Wanting to avoid a protracted standoff on this issue, the chair of the electoral working group of the National Assembly decided to table both drafts for discussion in the parliament, in order to ensure that all different views and suggestions would be heard and discussed. Although a number of its recommendations were either taken up, or otherwise addressed, the parliamentary opposition expressed its regret that, in its view, too few of its proposals had been accepted by the ruling majority, even when those proposals had been welcomed by the Venice Commission. Despite that, it agreed that, in general, the new electoral code was an improvement over previous versions and that it could form an adequate basis for democratic elections.

47. On 10 February 2011, the President of the National Assembly of Armenia requested the opinion of the Venice Commission on the proposed amendments to the electoral code. A joint opinion [18] of the Venice Commission and OSCE/ODIHR on these amendments was adopted on 20 June 2011. The Armenian authorities informed us that the recommendations and concerns contained in the opinion had already been transmitted to the authorities before they were formally adopted by the Venice Commission. This, reportedly, had allowed the authorities to take the Venice Commission's recommendations into account when adopting the new electoral code on 26 May 2011. Nonetheless, the authorities have asked for an opinion of the Venice Commission on the electoral code adopted. At the moment of writing, this opinion was not yet available, and we are therefore not in a position to assess to what extent the Venice Commission recommendations and concerns have been dealt with in the new electoral code. We would, however, urge the authorities to address any remaining recommendations and concerns that may be contained in the Venice Commission's future opinion on the new electoral code.

48. In its interim opinion, the Venice Commission and the OSCE/ODIHR welcomed the improvements made in the new electoral code, which address several previous recommendations from the Venice Commission and international election observers, including the Assembly. However, the Venice Commission considered that a number of areas would benefit from further improvement, including *, inter alia*, formation of election commissions, candidacy rights, campaign regulations, determination of election results and complaints and appeal procedures.

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16. For more detailed information on the electoral reform working group, we refer to our previous reports, Doc. 11786 and Doc. 11962.

17. The Heritage Party was originally the only opposition party in the parliament in the aftermath of the March 2008 events. It was later joined by the Armenian Revolutionary Federation – Dashnaktsutyun Party – which left the governing coalition over disagreements regarding the policy on establishing diplomatic relations with Turkey.

18. Document CDL-AD(2011)021.

49. The new electoral code introduces a mixed professional-partisan model of election administration, whereby the Central Election Commission and the Constituency Election Commissions are composed of civil servants nominated by independent bodies, [19] while the Precinct Election Commissions are appointed via a partisan model that allows each parliamentary faction in the National Assembly to appoint a member in each commission.

50. The professional model for the Central Election Commission and Constituency Election Commissions was introduced with the aims of increasing the trust of the stakeholders and general public in the election process and avoiding the politicisation of the higher levels of the election administration, which has been problematic in the past. For the same reason, membership of the higher-level election commissions was restricted to civil servants, as their duties are covered by the Law on Civil Service, which foresees severe penalties for fraud and misuse of power by civil servants in the exercise of official duties. It is hoped that this will counter any temptation for electoral misconduct by members of the election commissions in the exercise of their duties.

51. As noted by the Venice Commission, the fundamental basis for a professional election administration is the trust of all stakeholders in the neutrality of the state institutions. This trust has often been questioned in Armenia, and we therefore call on the authorities to ensure that no pressure is put on – and that even no impression to this effect is given – the civil servants that are members of the election commissions.

52. In our view, as well as in that of most of our interlocutors, the newly adopted electoral code can provide an adequate basis for the conduct of democratic elections if implemented in good faith. All political forces now have the responsibility to give life to this code and to ensure that it is implemented both in letter and in spirit.

53. As we have mentioned in previous reports, the events of March 2008 were to a large extent the result of a complete breakdown of public trust in the political system in general and in the fairness of the conduct of elections in particular. This underscores the importance of the upcoming elections: if conducted in a democratic manner that has the trust of the Armenian public, they will be the culmination of the normalisation of the political environment after the March events. On the other hand, a failure of the political system to conduct democratic elections would have serious consequences.

54. Of additional importance is the fact that, as a result of the political developments in the aftermath of the March 2008 events, a considerable number of political views and newly emergent political forces are not represented in the current composition of the National Assembly. A number of mechanisms have been set up and utilised to involve this extra-parliamentary opposition in critical questions for the political development of the country, but the rightful place for such dialogue and discussion – in the long term – should be the parliament. It is widely expected that the current extra-parliamentary opposition will enter parliament after the elections, which, in the light of the above, will be beneficial for the democratic consolidation of the country and will strengthen the social-democratic base necessary for the reforms that are needed.

55. We strongly welcome the fact that the electoral reform was finalised well before the elections that will take place next year. This not only ensures the stability of electoral law when the elections are called but also allows for a less politicised reform process than would have been the case if the reforms had taken place close to the elections themselves. [20] This strategic, forward-looking approach to electoral reform should be an example for other Council of Europe member states when considering electoral reform.

56. The Armenian National Congress has called for early parliamentary and presidential elections and has made this a key issue in the recently established dialogue with the ruling coalition. [21] We have already mentioned the importance of the trust of the public and electoral stakeholders in the election process. This will require proper time for, and preparation by, the electoral administration and all parties that will compete in these elections. We have some concerns that early elections would hamper the quality of the conduct of the elections and thus would not contribute to generating the requisite trust in the election process. Moreover, it seems to us that early elections would only bring forward the election date by a few months at the most.

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19. The Central Election Commission is composed of seven members appointed by the President, on the basis of candidates proposed by the Human Rights Defender (Ombudsman), the Chair of the Chamber of Advocates and the Chair of the Court of Cassation. The Constituency Election Commissions are in turn appointed by the Central Election Commission.

20. The stability of the legal framework as well as a non-politicised reflection reform process, were stated objectives of the authorities when initiating these reforms.

21. See also Section 5 on the dialogue between extra-parliamentary opposition and ruling coalition.

57. International, in addition to domestic, election observation will be important in shoring up the required trust in the electoral process. Therefore, we call on the international institutions to ensure that the forthcoming elections will be observed by a large number of international election observers in order to ensure a maximum coverage of polling stations. To that end, we also recommend that our Assembly participates with a large delegation in the framework of the International Election Observation Mission (IEOM).

4.2. Reform of the judiciary

58. The functioning of the judiciary continues to be an issue of great concern, especially with regard to its lack of independence. These concerns pre-date the March 2008 events. In the view of the Assembly, this lack of independence and the resulting absence of trust of the Armenian public in the judiciary as an impartial arbiter were among the underlying causes for public resentment that were at the core of the March 2008 events. In Resolution 1609 (2008), the Assembly therefore urged the authorities to step up their efforts to establish a truly independent judiciary and enhance the public's trust in the courts. [22]

59. The problematic functioning of the judiciary was highlighted in the report of the OSCE/ODIHR on the monitoring of the trials of the persons arrested in relation to the March 2008 events. This report reveals serious problems in the adjudication of these trials, raising questions about the right to a fair trial in Armenia as required by Article 6 of the European Convention on Human Rights (ETS No. 5).

60. In addition, the justice system in Armenia is still very much prosecution driven, and the judiciary is openly biased in favour of the prosecution and police, which raises questions with regard to the principle of equality of arms between prosecution and defence, as well as the presumption of innocence. This bias in favour of the authorities is also important in relation to combating ill-treatment and police brutality. [23] As mentioned in a recently published report [24] by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), judges in Armenia should be reminded that they must take appropriate actions in response to indications and allegations of police ill-treatment and abuse. Failing to do so could lead – or contribute – to a climate of impunity for abuse by the police, which is a matter for concern.

61. The problems with regard to the justice system and independence of the judiciary are recognised by the authorities, which have made the reform of the judiciary one of the priorities of their reform package. However, despite this priority, the reforms have, to date, not achieved the desired results. Most interlocutors consider the lack of independence of, and corruption in, the judiciary as endemic and one of the main problems hampering the development of Armenian society.

62. These concerns were highlighted by the recently appointed Minister of Justice, who has made the fight against corruption in the judiciary and the strengthening of its independence the cornerstones of his policy. During his recent visit to Strasbourg, the Minister informed us that while on paper the legal guarantees for the independence of the judiciary exist, this has not led to an independent judiciary in practice, and additional reforms are direly needed.

63. We welcome the priority given these issues, as well as the clear political will to address them, by the new Minister of Justice. At the same time, we wish to stress that reforming the judiciary is a long-term process and that reforms should not focus on legislative changes alone but should be combined with a comprehensive policy for their implementation aimed at changing mentalities and practice.

4.3. Police reform

64. The events of March 2008 underscored the need for a thorough reform of the police. As mentioned above, serious questions were raised in the report of Ad Hoc Parliamentary Inquiry Committee about the handling by the police of the events on 1 and 2 March 2008. Subsequently, a number of personnel changes at the top of the national police force were made. This seems to indicate the dissatisfaction of the authorities with the overall police performance during those days. However, this cannot be seen as a substitute for a comprehensive inquiry into command responsibility for the ten casualties, which we have called for on numerous occasions. A series of reforms was launched that specifically aims at improving the manner in

22. Resolution 1609 (2008), paragraph 8.5.
23. OSCE/ODIHR, Final Report of the Trial Monitoring Project in Armenia (April 2008 – July 2009). See also the report by the Commissioner for Human Rights of the Council of Europe following his visit to Armenia from 18 to 21 January 2011 (CommDH(2011)12).
24. Report to the Armenian Government on the visit carried out by the CPT from 15 to 17 March 2008.

which the police handle crowd control during mass gatherings. In addition, the guidelines for the use of "special means" – an Armenian term for special weapons and other forms of the use of force by the police – during demonstrations were considerably changed to avoid misuse or casualties.

65. However, concerns already had been raised about the police before the March 2008 events, including on issues that were mentioned in the report of the Inquiry Committee. Excessive use of force by police officers as well as cases of corruption and falsification of evidence by the police in order to ensure a conviction are regrettably endemic in Armenia. This was also highlighted in the report of the CPT, which called on the Armenian authorities to "make it clear to all law enforcement staff that ill-treatment of persons in their custody is illegal and will be dealt with severely in the form of criminal prosecution". [25]

66. We would like to stress that these problems are recognised by the Armenian authorities, who have announced a comprehensive reform of the police. In this respect, we welcome the many reforms initiated under the auspices of the new Deputy Head of Police. However, from our meetings with the leadership of the police, we got the clear impression that, unfortunately, he will face considerable internal resistance to his proposed reforms.

67. A compounding hindrance to these reforms is the institutional set-up of the police. Armenia has no ministry of the interior, and the police are basically self-governing under the authority of the president and accountable only to him. This means that public oversight of the police, and accountability to parliament, is limited. In addition, as a result of this institutional arrangement, the credibility of investigations by the police force into its own behaviour is impaired, as is clear from the investigations into the March 2008 events to which the police were a party.

68. In line with the request of the Assembly that an effective public control mechanism over the police be guaranteed both in law and in practice, [26] we strongly recommend that civilian control and normal accountability to the parliament be established, possibly by re-establishing a ministry of the interior.

69. A key element of the police reforms announced by the authorities was the establishment of an independent police complaints mechanism. The aim of the proposed mechanism is to enable an independent entity to investigate allegations of police misconduct. A first proposal for such a complaints mechanism was prepared by the secretariat of the President of Armenia and presented to the Council of Europe for comments.

70. In their assessment, [27] the Council of Europe experts welcomed the proposed mechanism as an important step forward to fight abuses and misconduct by the police. However, they felt that additional measures should be taken to ensure the genuine independence, effectiveness and credibility of such a mechanism.

71. In the authorities' proposal, all members of the complaints investigation committee would be nominated and appointed by the President, which, in the view of the experts, would undermine their independence. In addition, the proposed criteria for membership of this committee were found to be overly restrictive, which could undermine the quality and effectiveness of the investigations. The experts therefore recommended widening the profile for members of the committee and suggested that these members should be selected by an elected body, in line with European standards. Moreover, the experts recommended that the excessive limitations on the scope and type of complaints the mechanism could investigate needed to be removed and that it should be given the mandate and means to conduct its own investigations and verification of facts.

72. However, to our regret, the authorities have informed us that they do not consider it appropriate to implement such a complaints mechanism at the present time. In their view, which is supported by other interlocutors such as the Human Rights Defender, the establishment of such a mechanism in the current political and institutional context would only add another layer of corruption for the citizens seeking justice from police abuse. The authorities stress that they are still committed to the establishment of a proper complaints mechanism but that its implementation should be delayed until the necessary preconditions have been met.

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25. Report to the Armenian Government on the visit carried out by the CPT from 15 to 17 March 2008, paragraph 14.
26. Resolution 1609 (2008), paragraph 8.6.
27. Expert opinion on the draft decree of the President of the Republic of Armenia on approving the procedure for setting up a commission supervising the activities of law enforcement bodies and its rules of procedure (document DG-HL (2010) 5).

73. While accepting the merits of the authorities' argument, we would like to emphasise that this delay should not lead to the proposal for such a complaints mechanism being shelved indefinitely. We therefore call on the authorities to establish, and inform us about, a clear timetable for the implementation of the police complaints mechanism, as well as an enumeration of the conditions – and the manner in which they will be met – that need to be in place for the mechanism to be established.

4.4. Media pluralism

74. An essential condition for the democratic development of Armenia is the creation of a genuinely pluralist media environment, which is so far still lacking in the country. The Assembly has therefore consistently called on the authorities to foster a pluralist media environment and to allow an open, fair and transparent broadcasting licence tender procedure in line with the guidelines adopted by the Committee of Ministers and the case law of the European Court of Human Rights.

75. In line with the decision of the Court in the case of the denial of a broadcasting licence to the television channel A1+, and after a delay that the authorities argued was needed due to the technical requirements for digital broadcasting in Armenia, a broadcasting licences tender was organised from July to December 2010. While in total 25 licences were up for competitive bidding, the main question that dominated this tender was whether A1+ would regain its lost broadcasting licence in the competition. For many observers the question of whether or not A1+ would be allowed back on air would be indicative of the willingness of the authorities to open up the media landscape in Armenia and establish a genuinely pluralist media environment.

76. On 16 December 2010, the National Commission for Television and Radio (NCTR) adopted a controversial decision [28] in which it announced that A1+ was not being granted a broadcasting licence on the grounds that the information sustaining the bid of Meltex LLC, the holding company of A1+, was "not acceptable due to the fact that a significant number of documents verifying availability of necessary financial resources are forged and unfounded". [29] This was denied by the owners of Meltex LLC, while other observers noted that technical errors and omissions in other applications did not prevent them from being awarded a broadcasting licence in this tender. While not wishing to comment on the merits of the decision of the NCTR, [30] we regret that the authorities – in this case the NCTR – rejected the bid from A1+, while being fully aware of its significance, on what would seem to be purely technical/administrative grounds, without allowing Meltex to correct or clarify the background information it had given to support its bid.

77. At the Committee of Ministers' 1115th meeting, from 7 to 8 June 2011, the Ministers' deputies adopted Resolution CM/ResDH(2011)39 on the execution of the judgment of the European Court of Human Rights in the case of *Meltex and Mesrop Movsesyan v. Armenia*, in which it decided to close its examination of the case on the grounds that Meltex had been able to participate in a transparent tender in which it received a reasoned decision that it could appeal in the courts if it so wished. This decision was met with profound criticism by the Armenian opposition and most civil society and media representatives, who felt that it was taken too hastily, at a time when the NCTR decision is still *sub judice,* and that it did not take all factors sufficiently into account.

78. It is important to differentiate between the order of the Court in this case and the position of the Assembly (as expressed in several resolutions) on media pluralism in Armenia. While the decision of the Court required that an open and transparent broadcasting licence tender procedure be organised by the Armenian authorities, the Assembly has always asked that, in addition, such a tender process should result in a more pluralist and diverse media environment.

79. The Television and Broadcasting Act of Armenia was substantially amended in 2010, in close consultation with the Council of Europe. While we welcome that the amended law is overall an improvement over previous legislation, a number of issues that are decisive for a genuinely pluralist and open media environment have not, in our view, been sufficiently addressed. It is clear that the outcome of the recent tender cannot be considered to be in line with the Assembly's requests in that respect.

80. One of the primary problems with regard to the regulatory and licensing framework is the composition of the National Commission on Television and Radio. While the recently amended legislation strives to ensure the independence of the individual members and provides for a transparent and open nomination process, it does not require that the Commission in its entirety be truly representative or that it reflect the different views

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28. NCTR Decision 96-A, "On determining the winner of competition No. 11 for the digital broadcasting of international/ current affairs programmes in Yerevan".
29. Ibid.
30. Meltex LLC has appealed to the European Court of Human Rights against the decision of the NCTR.

that exist in the Armenian society. It is clear that the current arrangements for the composition of the Commission – 50% nominated by the President of the Republic and 50% by the parliament (in which the ruling coalition has a comfortable majority) – do not necessarily lead to a heterogeneous and impartial composition from a political point of view. We would like to recall that the Assembly has called for the NCTR to be "truly representative of the Armenian society". [31]

81. According to European standards, the Armenian authorities are obliged to safeguard and promote media pluralism in the introduction of digital television and radio and in the issuing of broadcasting licences. [32] However, in the view of several experts, with whom we concur, the current legislation does not sufficiently require or guarantee that pluralism should guide the decisions of the NCTR when granting broadcasting licences. [33] While the law requires that the criterion "capacity to promote pluralism" must be taken into account in the licensing procedure – thus placing the onus for the responsibility for pluralism on the individual broadcasters – nowhere does the law provide that the decisions of the NCTR with respect to the granting of individual licences should ensure a pluralist media environment. This is a major shortcoming of the current legislation that needs to be addressed by making pluralism a firmly established legal guiding principle for licensing decisions by the NCRT.

82. From a number of expert reviews of the outcome of the broadcasting licence tender procedure, we have a clear impression that the discretionary powers conferred by the law on the NCTR are too broad and thus leave room for arbitrariness in the application of the different criteria for the granting of broadcasting licences, in contravention of international standards.

83. The introduction of digital broadcasting makes broadcasting frequencies far less of a scarce commodity, theoretically allowing for a considerable increase in broadcasting licences. However, in Armenian legislation, digital broadcasting licences, like all other broadcasting licences, are linked to the analogue broadcasting licences. The result is that the introduction of digital broadcasting actually reduces – temporarily, according to the authorities – the number of broadcasting licences available.

84. Relatively easy entry into the broadcasting market for a multitude of interested groups is an important mechanism to ensure pluralism in the media environment. [34] Given the opportunities offered by the introduction of digital broadcasting, we urge the Armenian authorities to de-link digital broadcasting licences from analogue broadcasting licences and to organise, in the very near future, a tender for a sufficiently large number of digital broadcasting licences with the clear objective of increasing the pluralism and diversity of the media environment.

85. On several occasions, the Assembly has expressed its concern about the intertwining of political and business interests. In that respect, it is important that measures are taken to avoid any emergence of a *de facto* or *de jure* media monopoly in Armenia.

5. Dialogue

86. In all its resolutions following the March 2008 events, the Assembly has consistently called for a dialogue to be initiated between the authorities and the opposition, including the extra-parliamentary opposition.

87. Following the release of the remaining prisoners in relation to the March 2008 events and the renewed investigation into the ten deaths during these events, as well as the end of the ban on demonstrations on Liberty Square, the Armenian National Congress announced its willingness to enter into a dialogue with the authorities on the normalisation of the political climate and democratic development of the country. The authorities subsequently proposed the start of open-ended talks between the ruling coalition and the ANC in the framework of the Public Council. The first such meeting took place on 18 July and the second meeting on 26 July 2011.

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31. Resolution 1609 (2008), paragraph 8.3. See also Resolution 1677 (2009), paragraph 11.
32. Recommendation Rec(2000)23 and Recommendation Rec(2003)9 of the Committee of Ministers.
33. Article 19 – Comment on the report on expert analysis of the results of licensing competitions in Armenia: international criteria for the assessment of broadcasting tenders.
34. See, for instance, Doc. 12554 and Resolution 1801 (2011) on the honouring of obligations and commitments by Georgia.

88. We strongly welcome the beginning of this dialogue between the ruling coalition and extra-parliamentary opposition, which we have consistently called for. At the same time, we call for this dialogue with the extra–parliamentary opposition to go hand in hand with a constructive dialogue between the ruling coalition and the parliamentary opposition in the framework of the work of the National Assembly.

89. The Armenian National Congress has stated that its sole objective for the dialogue is the organisation of early parliamentary and presidential elections. While we recognise the legitimacy of this subject as a political strategy, we call upon all sides not to restrict the dialogue to a limited number of potentially contentious subjects. In our view, the objective of the dialogue between the opposition and ruling coalition, be it in the framework of the National Assembly or in direct talks, should be the further normalisation of the political environment and the conduct of democratic elections, as well as the creation of a climate in which genuinely democratic and competitive elections can take place that have the full confidence of the Armenian electorate.

6. Concluding remarks

90. We warmly welcome the latest general amnesty adopted by the National Assembly upon the initiative of the President of Armenia, which resulted in the release of all persons in prison in relation to the events of March 2008. The release of these persons, the renewed impetus toward the investigation of the ten deaths during the March 2008 events and the start of a constructive dialogue between the opposition and the ruling coalition means that the chapter on the March 2008 events can finally be considered closed, including for our Assembly.

91. At the same time, these events and their aftermath have set clear priorities for the democratic development of the country and thus for the monitoring procedure. These priorities are: the conduct of genuinely democratic parliamentary elections that result in a parliament that truly reflects Armenian society; the creation of a robust democratic and pluralist political environment that has the full trust of the Armenian public; the establishment of an open and pluralist media environment; the reform of the police and the reform of the judiciary with a view to guaranteeing its independence both in law and in practice. However, we should stress that, while these priorities are crucial, they do not diminish the importance of the other obligations and commitments of Armenia to the Council of Europe.

92. Lastly, we would like to highlight the close and constructive co-operation that has been developed between the Armenian authorities and the Parliamentary Assembly, despite the often difficult and painful subjects raised. In our view, this is an example of how co-operation should take place in the framework of the monitoring procedure. While we have often made suggestions, and from time to time mediated between the different forces and interests, the solutions needed to resolve a complex situation have come from the Armenian political forces and participants themselves, as should be the case. We are confident that this co-operation will continue, and will be strengthened, in the important tasks that are ahead of us.